IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

WP(C).No. 24540 of 2004(U)

OS.92/2001 of ADDL.M.C.,KOZHIKODE-I

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PETITIONER:

P. RAJAN, S/O. KUMARAN,
KANIYARAKKAL HOUSE, P.O. KOTTOOLI, CALICUT.

BY ADV. SRI.THOMAS ANTONY
SRI.P.R.SREEJITH

RESPONDENTS:

T.P. MOHANAN, S/O. BALAN,
KANIYARAKKAL PARAMBA, P.O. KOTTOOLI, CALICUT.

BY ADV. SRI.P.S.SREEDHARAN PILLAI
SRI.K.B.SAJEESH
SRI.P.GOPINATH
SRI.C.S.SUNIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.24540/2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE PLAN AND REPORT DATED 21.5.2001 FILED BY THE ADVOCATE COMMISSIONER.

EXT.P2: COPY OF THE OBJECTION FILED BY THE PETITIONER.

EXT.P3: COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER IN O.S. 92 OF 2001 DATED 17.7.2001.

EXT.P4: COPY OF THE WORK MEMO FILED BY THE PETITIONER BEFORE THE MUNSIFF COURT I A KOZHIKODE DATED 21.1.2003.

EXT.P5: COPY OF THE PLAN AND REPORT.

EXT.P6: COPY OF THE OBJECTIONS OF THE PETITIONER DATED 5.12.2003

EXT.P7: COPY OF THE PLAN AND REPORT.

EXT.P8: COPY OF THE OBJECTION FILED BY THE PETITIONER DATED 28.2.2004

EXT.P9: COPY OF THE COMMON ORDER OF THE ADDITIONAL MUNSIFF I, KOZHIKODE DATED 13.7.2004

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 24540 of 2004

Dated this the 29th day of May, 2007

JUDGMENT

The persuasive submissions of the learned counsel for the petitioner notwithstanding, I cannot agree that Ext.P9 common order passed by the learned Munsiff on the application filed by the petitioner for setting aside the commission report and by the plaintiff for remitting the commission report again to the commissioner was wholly unreasonable or perverse as to warrant interference under Article 226 of the Constitution.

2. Significantly the plaintiff, who also suffered an adverse order under Ext.P9, has not chosen to challenge Ext.P9. But the learned counsel for the petitioner would submit that the petitioner will be interested in the counter claim which has been submitted irrespective of the result of the suit. The suit is mainly for recovery of possession and the learned counsel is certainly right when he submits that the identity of the property sought to be recovered is crucial. But as can be seen from

Ext.P9, the learned Munsiff has noticed that the Commissioner's report was remitted to the Commissioner on two occasions and the report sought to be set aside through I.A. 825/2004 was submitted in the 3rd round. It is not as if Ext.P9 is not founded on evidence. The court examined the Advocate Commissioner and the Surveyor. The court on an appreciation of the evidence, which was given by the Commissioner and the Surveyor, found that there is no warrant for setting aside the Commission report.

Having regard to the very narrow contours of this court's supervisory jurisdiction, challenge against Ext.P9 fails. But at the same time it is made clear that confirmation of Ext.P9 by this court will not stand in the way of the petitioner impugning the decree (if the same goes against him) inter alia on the grounds which are urged in this writ petition also.

PIUS C. KURIAKOSE,
JUDGE.

dpk